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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2011-0607; FRL-9611-2]

**Approval and Promulgation of Air Quality Implementation
Plans; State of New Jersey; Regional Haze State Implementation
Plan**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the revision to the New Jersey State Implementation Plan, submitted by the State of New Jersey. The revision addresses Clean Air Act requirements and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program. EPA's approval includes but is not limited to New Jersey's plans to implement Reasonable Progress Goals, Best Available Retrofit Technologies on eligible sources, as well as New Jersey's Subchapter 9, Sulfur in Fuels rule and source-specific SIP revisions.

EFFECTIVE DATE: This rule is effective on [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2011-0607. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212-637-4249.

FOR FURTHER INFORMATION CONTACT: Robert F. Kelly, State Implementation Planning Section, Air Programs Branch, EPA Region 2, 290 Broadway, New York, New York 10007-1866. The telephone number is (212) 637-4249. Mr. Kelly can also be reached via electronic mail at kelly.bob@epa.gov.

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I. What Action is EPA Taking?

EPA is approving a revision to New Jersey's State Implementation Plan (SIP) submitted on July 28, 2009, that addressed progress toward reducing regional haze for the first implementation period ending in 2018. The initial submittal was supplemented by a December 9, 2010 submittal transmitting New Jersey's adopted regulation Subchapter 9 Sulfur in Fuel, lowering the sulfur content in fuel oil, a March 2, 2011 submittal which included Best Available Retrofit Technologies (BART) determinations and controls, and a December 7, 2011 submittal including Air Pollution Control Operating Permits for sources that require BART reductions, as listed in the regulatory section of this action.

EPA determined that New Jersey's Regional Haze Plan contains the emission reductions needed to achieve New Jersey's share of emission reductions that were determined to be reasonable through the regional planning process. Furthermore, New Jersey's Regional Haze Plan ensures that emissions from the State will not interfere with the Reasonable Progress Goals (RPGs) for neighboring States' Class I areas. Thus, EPA is approving into the SIP the Regional Haze Plan submitted by New Jersey on July 28, 2009 and supplemented on December 9, 2010, March 2, 2011, and December 7, 2011 as satisfying the requirements of the Clean Air Act. EPA is taking this action pursuant to Section 110 of the Act.

For additional details on EPA's analysis and findings the reader is referred to the proposal published in the August 11, 2011 Federal Register (76 FR 49711) and a more detailed discussion as contained in the Technical Support Document which is available online at <http://www.regulations.gov>, Docket number EPA-R02-OAR-2011-0607.

II. Did NJ Adopt BART Requirements Consistent with EPA's Proposal?

On December 7, 2011, New Jersey submitted to EPA the adopted supplement, of the March 3, 2011 draft which EPA parallel processed in the August 11, 2011 Federal Register. The December 7, 2011 supplement consists of an addendum to New Jersey's BART Technical Support Document, final permit modifications to satisfy BART, public notice affidavits and other administrative documents. This supplement to the SIP is included in the Docket and may be viewed by the reader at www.regulations.gov.

New Jersey did not make any substantive changes to the source specific operating permits to incorporate BART other than those discussed in EPA's August 11, 2011 proposal. Since no substantial changes were made from the proposal, and the SIP revision has been adopted by New Jersey and submitted formally to EPA for incorporation into the SIP, EPA is approving New Jersey's Regional Haze Plan, including BART.

III. What Comments Did EPA Receive in Response to its Proposal?

Two comments were received on EPA's August 11, 2011 proposal. The first requested that EPA review more closely New Jersey's prescribed burning program. New Jersey allows, by permit only, prescribed burning in order to reduce the likelihood of larger

fires that would reduce visibility at Class I areas in New Jersey and other states. EPA acknowledges this comment.

The second comment was from the Pillsbury LLP law firm on behalf of B.L. England's Cape May power plant. Pillsbury commented that the plant was ready to operate before August 7, 1962¹ and was delayed due to forces outside the control of facility. Pillsbury submitted extensive comments based on its review of the legislative history of this portion of the Clean Air Act.

New Jersey has determined that the Cape May facility is eligible for BART controls whether or not Unit 1 is determined to be BART-eligible, and EPA supports New Jersey's determination. In addition, the Clean Air Act requires states to adopt reasonable controls as necessary to make reasonable progress towards improving visibility.

Based on New Jersey's analysis, the controls New Jersey has required for this facility under an existing Administrative Consent Order are reasonable and would be enforced on the Cape May facility, even if it were not eligible for BART emission

¹ One of the criteria to be classified as BART eligible is that the emission unit was in existence on August 7, 1977 and begun operation after August 7, 1962 (see section 169A(b)(2)(A) of the Act and 40 CFR Part 51, Appendix Y).

controls. EPA agrees with New Jersey's determination of emission control requirements for this facility.

IV. What are EPA's Conclusions?

EPA has evaluated the proposed revision to the SIP submitted by the State of New Jersey that addresses regional haze for the first planning period from 2008 through 2018. EPA is approving the revision to the SIP, which addresses the Regional Haze requirements of the Clean Air Act. This approval includes but is not limited to the Reasonable Progress portion of the plan, New Jersey's implementation of Best Available Retrofit Technologies on eligible sources, and New Jersey's Subchapter 9, Sulfur in Fuels rule.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For

that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those

requirements would be inconsistent with the Clean Air Act;
and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of

the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 13, 2011.

Judith A. Enck,
Regional Administrator,
Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations
is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as
follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart FF - New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(91) to
read as follows:

§52.1570 Identification of plan.

* * * * *

(c) * * *

(91) A revision submitted on July 28, 2009, as supplemented on
December 9, 2010, March 2, 2011 and December 7, 2011, by the New
Jersey Department of Environmental Protection (NJDEP) that
addresses the regional haze requirements of Clean Air Act section

169A. The December 9, 2010 submittal also addresses an element of the PM2.5 SIP revision.

(i) Incorporation by reference:

(A) Amendments to New Jersey Administrative Code, Title 7, Chapter 27 (NJAC 7:27) Subchapter 9, "Sulfur In Fuels," Section 9.2 Sulfur content standards, with effective date of September 20, 2010 and operative date of October 25, 2010.

(B) The following Air Pollution Control Operating Permit, Significant Modifications and Preconstruction Approvals:

(1) PSEG Fossil LLC Hudson Generating Station dated March 8, 2011, Permit BOP110001, Program Interest 12202 for units: U1-OS Summary, U1-OS1, U1-OS2, U2-OS Summary, U15-OS Summary and U16-OS Summary.

(2) Chevron Products Company dated March 4, 2011, Permit BOP100001, Program Interest 18058 for unit 15, process heaters: OS Summary (E1501 and E1502).

(3) ConocoPhillips (Linden City) dated September 21, 2011, Permit BOP110001, Program Interest 41805 for unit 3, process heaters: OS Summary, OS1-E241, OS2-E243, OS3-E245, OS4-E246, OS5-E247, OS6-E248, OS7-E249, OS8-E250, OS11-E242, OS13-E253, and OS15-E258.

(4) Vineland Municipal Electric Utility - Howard M. Down dated September 26, 2011, Permit BOP110001, Program Interest 75507 for units: U10-OS Summary, U10-OS2, U10-OS3, and U22-OS Summary.

(5) BL England Generating Station dated December 16, 2010, Permit BOP100003, Program Interest 73242 for units: GR2 U2, U1-OS Summary, U1-OS1, U2-OS Summary, U2-OS1, U3-OS Summary, U3-OS1, U6-OS Summary, U6-OS1, U7-OS1, U7-OS2, U7-OS4, U7-OS5, U7-OS6, U7-OS7, U7-OS10, U7-OS11, U7-OS12, U8-OS Summary, and U8-OS1.

(ii) Additional information.

(A) Letter dated December 9, 2010 from Commissioner Bob Martin, NJDEP, to Regional Administrator Judith A. Enck, EPA Region 2, submitting the SIP revision containing Subchapter 9.

(B) December 7, 2011, letter from Director William O'Sullivan, NJDEP, to Acting Director John Filippelli, Division of Environmental Planning and Protection, EPA Region 2, submitting a supplement to the 2009 Regional Haze SIP which contains the Best Available Retrofit Technology (BART) determinations and enforceable BART emission limits for five facilities.

3. Section 52.1573 is amended by designating the existing paragraph as paragraph (a), and adding a new paragraph (b) to read as follows:

§52.1573 Approval status.

* * * * *

(b) *Visibility protection.* EPA approves the Regional Haze SIP revision submitted by the New Jersey Department of Environmental Protection on July 28, 2009, as supplemented on December 9, 2010, March 2, 2011 and December 7, 2011 as meeting the requirements of Clean Air Act section 169A and 40 CFR 51.308. In particular, EPA approves the New Jersey Regional Haze SIP as meeting the requirements of 40 CFR 51.308(e) regarding Best Available Retrofit Technology and 40 CFR 51.308(d)(2) and (d)(4)(v) regarding the calculation of baseline and natural conditions for the Brigantine Wilderness Area of the Edwin B. Forsythe National Wildlife Refuge, and the statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal Area.

4. In § 52.1605 the table is amended by revising the entry for "Title 7, Chapter 27: Subchapter 9" to read as follows:

§52.1605 EPA - approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * * * *			
Title 7, Chapter 27			

<p>* * * * *</p> <p>Subchapter 9, "Sulfur in Fuels"</p> <p>* * * * *</p>	<p>Sept. 9, 2010</p>	<p>[Insert date of publication and Federal Register page citation]</p>	<p>Sulfur dioxide "bubble" permits issued by the State pursuant to §9.2 and not waived under the provisions of §9.4 become applicable parts of the SIP only after receiving EPA approval as a SIP revision.</p>
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5. Section 52.1606 is revised to read as follows:

§52.1606 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable procedures meeting the requirement of 40 CFR 51.307, New source review, for protection of visibility in mandatory Class I Federal areas.

(b) Regulations for new source review. The provisions of §52.28 are hereby incorporated and made part of the applicable plan for the State of New Jersey.

[FR Doc. 2011-33666 Filed 12/30/2011 at 8:45 am; Publication
Date: 01/03/2012]